CHAPTER 51-24
ASSISTIVE TECHNOLOGY DEVICE WARRANTIES

51-24-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Assistive technology device" means any item, piece of equipment, or product system that a consumer purchases or accepts transfer of in this state and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities.
   a. The term includes:
      (1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility or positioning of an individual, such as positioning features, the switches and controls for any motorized or nonmotorized features, and hydraulic or nonhydraulic lifts or elevators designed to transport an individual from one location or level to another in private personal vehicles or private residences.
      (2) Telephone communication devices for the deaf, assistive listening devices, and other aids that enhance an individual's ability to hear, except for hearing instruments excluded by subdivision b.
      (3) Voice-synthesized computer modules, optical scanners, talking software, braille printers, artificial larynges, voice amplification devices, alternative augmentative communication devices, and other devices that enhance an individual's ability to communicate, except for those items excluded by subdivision b.
      (4) Voice recognition computer equipment, software and hardware accommodations, switches, and other forms of alternative access to computers.
      (5) Adapted environmental control units.
      (6) Any other assistive device, instrument, apparatus, or any component, part, or accessory that enables an individual with a disability to perform tasks such as communicating, speaking, seeing, hearing, maneuvering, moving, walking, standing, reaching, grasping, working, sleeping, learning, or caring for oneself, or which is used or intended to be used to assist, affect, or replace the structure or any function of the body of an individual with a disability, except for those items excluded by subdivision b.
   b. The term does not include:
      (1) Devices that are modified or customized pursuant to consumer design and specifications;
      (2) Hearing instruments as defined in subsection 2 of section 43-33-01;
      (3) Eyeglasses;
      (4) A surgical implant performed by a physician or surgeon; or
      (5) A restoration or dental prosthesis provided by a dentist.
2. "Commercial lessor" means a person who is in the business of leasing assistive technology devices to consumers or who holds the lessor's rights.
3. "Commercial seller" means a person who is in the business of selling or manufacturing assistive technology devices.
4. "Consumer" means:
   a. The purchaser of an assistive technology device from a commercial seller for personal use;
   b. A person to whom an assistive technology device is transferred for personal use when all express warranties have not yet expired;
   c. A person who may enforce the warranty on an assistive technology device;
   d. A person who leases an assistive technology device from a commercial lessor; or
   e. The parent or guardian of a person who is a consumer under subdivisions a through d.
5. a. "In need of repair" means:

(1) A specific condition, generic defect, or malfunction that substantially impairs the use, value, or safety of an assistive technology device or any of its component parts; or
(2) The assistive technology device or a component of the assistive technology device fails to conform to:
(a) Any applicable express warranties; or
(b) Any implied warranties including the implied warranty of merchantability described in section 41-02-31 and the implied warranty of fitness for a particular purpose described in section 41-02-32.

b. The term does not include a condition or defect that is the result of abuse or unforeseen alteration of the assistive technology device by the consumer.

6. "Loaner" means an assistive technology device that is loaned to the user without charge while repairs are made to the user's assistive technology device. A loaner must:
a. Be in good working order;
b. Perform the essential functions of the assistive technology device that is being repaired, considering the needs of the user; and
c. Not create a threat to the safety of the user.
7. "Manufacturer" means:
a. A person who manufactures or assembles assistive technology devices;
b. A person who manufactures or assembles any part of an assistive technology device; and
c. All persons involved in the manufacture, distribution, or sales of assistive technology devices up to the final retail seller or commercial lessor.
8. "Reasonable attempt to repair" means that, within one year after first delivery of the assistive technology device to a consumer or within the life of an express warranty, whichever is longer:
a. The assistive technology device is presented to the commercial seller in need of repair at least four times and it is again in need of repair; or
b. The assistive technology device is in need of repair and available to the seller for repair for at least thirty days. These thirty days may be consecutive or nonconsecutive.
9. "Transaction costs" means expenses caused by a covered repair including the costs of a loaner.

51-24-02. Express written warranties for assistive technology devices.

1. A manufacturer who sells an assistive technology device to a consumer, either directly or through another commercial seller, shall furnish the consumer with an express written warranty to preserve and maintain the utility and performance of the assistive technology device.
2. The express written warranty must be in effect for at least one year after first delivery of the assistive technology device to the consumer.
3. If a manufacturer fails to furnish an express written warranty to the consumer, the assistive technology device must be covered by an express warranty that meets the requirements of this section.
4. An express written warranty must guarantee that the assistive technology device:
a. Has no defects in parts or performance; and
b. Is free from any condition and defect that would substantially impair the device's use, value, or safety to the consumer.

51-24-03. Warranty claims.

1. A consumer may present a warranty claim for an assistive technology device by:
a. Reporting the warranty problem to the manufacturer, the commercial lessor, or the commercial seller within the life of the express warranty; and

b. Making the assistive technology device reasonably available to the manufacturer, the commercial lessor, or the commercial seller for repair.

2. If the terms of a warranty are invoked and a warranty claim is made, the assistive technology device must be repaired at no charge to the consumer, including parts, labor, shipping, delivery, and all other costs, regardless of whether the repairs are made after the expiration of the warranty period.
3. The commercial seller or the commercial lessor shall provide the consumer with a loaner and with reimbursement for transaction costs to the consumer from the repair:
   a. If the repair period is expected to be at least ten days; or
   b. If the repair period is not expected to be ten days but actually is ten days or more.
4. The costs of any warranty repair, loaner, or transaction costs due the consumer from the repair are to be borne in the first instance by the commercial seller or commercial lessor. The commercial seller and the commercial lessor may have rights to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. Those rights of the commercial seller or commercial lessor are not affected by this chapter.

51-24-04. Remedies - Sales.

1. If, after a reasonable attempt to repair by the commercial seller or manufacturer, the assistive technology device is not repaired, the warranty is considered breached.
2. If the warranty is breached, the consumer may return the assistive technology device to the commercial seller that sold the device and the consumer may choose to either:
   a. Receive a new replacement assistive technology device from the commercial seller and be reimbursed by the commercial seller for transaction costs; or
   b. Receive a full refund of the purchase price plus any finance charges from the commercial seller and be reimbursed by the commercial seller for transaction costs.
3. The following conditions apply to the remedies in this section:
   a. The commercial seller is allowed up to thirty days after return of the original assistive technology device to pay transaction costs to the consumer and to provide the consumer with either a new replacement assistive technology device or a full refund of the purchase price plus any finance charges.
   b. If a new replacement assistive technology device is not provided or if a full refund is not paid when the consumer returns the original assistive technology device, the commercial seller must provide a loaner to the consumer to use until the commercial seller has provided to the consumer a new replacement assistive technology device or a full refund of the purchase price plus any finance charges.
   c. The consumer may not be required to deal directly with any person other than the commercial seller that sold the assistive technology device. If agreeable, the consumer may deal with the manufacturer or other prior parties in the sales or distribution chain. If the commercial seller is no longer selling assistive technology devices, the consumer may deal with the seller's successor.
   d. The costs of a new replacement assistive technology device, a full refund, any loaner, and transaction costs due the consumer are to be borne in the first instance by the commercial seller. The commercial seller may have rights to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. Those rights of the commercial seller are not affected by this chapter.

51-24-05. Remedies - Leases.

1. If, after a reasonable attempt to repair by the commercial lessor or manufacturer, the assistive technology device is not repaired, the warranty is considered breached.
2. If the warranty is breached, the consumer may return the assistive technology device to the commercial lessor that leased the device and the consumer may choose to either:

a. Receive a new replacement assistive technology device from the commercial lessor; or
b. Receive a full refund from the commercial lessor of all moneys paid under the lease, including all finance charges.

3. The following conditions apply to the remedies in this section:
   a. The commercial lessor is allowed up to thirty days after return of the original assistive technology device to provide to the consumer either a new replacement assistive technology device or a full refund of all moneys paid under the lease, including any finance charges.
   b. If a new replacement assistive technology device is not provided or if a full refund is not paid when the consumer returns the original assistive technology device, the commercial lessor shall provide a loaner to the consumer to use until the lessor has provided to the consumer a new replacement assistive technology device or a full refund of all moneys paid under the lease, including any finance charges.
   c. The consumer may not recover transaction costs and the commercial lessor may not recover for use of the assistive technology device before the return of the device on a warranty claim.
   d. The consumer may not be required to deal directly with any person other than the commercial lessor that leased the assistive technology device. If agreeable, the consumer may deal with the manufacturer or other prior parties in the leasing, sales, or distribution chain. If the commercial lessor is no longer dealing in assistive technology devices, the consumer may deal with the lessor's successor.
   e. The costs of a new replacement assistive technology device, a full refund, and any loaner are to be borne in the first instance by the commercial lessor. The commercial lessor may have rights to reimbursement or compensation from the manufacturer or other prior parties in the leasing, sales, or distribution chain. Those rights of the commercial lessor are not affected by this chapter.

51-24-06. Thirty-day return.

A commercial seller or commercial lessor who sells or leases an assistive technology device to a consumer may not refuse to accept a return of the assistive technology device within thirty days after the purchase or lease if the assistive technology device has not met the needs of the consumer.

51-24-07. Sale or lease of a returned assistive technology device.

No assistive technology device returned by a consumer or lessor may be sold or leased again in this state unless full disclosure of the reasons for the return of the device is made to the consumer.

51-24-08. Other remedies - Penalties.

1. This chapter does not limit rights or remedies available to a consumer under any other law or contract.
2. Any waiver of rights by a consumer under this chapter, any waiver of the implied warranty of merchantability for an assistive technology device, and any waiver of the implied warranty of fitness for a particular purpose for an assistive technology device is void.
3. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this chapter. The court shall award a consumer who prevails in an action to recover damages caused by a violation of this chapter twice the amount of any pecuniary loss together with costs, disbursements, reasonable attorney's fees, and any equitable relief that the court finds appropriate.
4. Any right to bring a class action under this chapter is properly regulated by the judiciary. The supreme court, acting in its rulemaking capacity or otherwise, has full authority under the Constitution of North Dakota to regulate class actions.